Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Revision of Rules and Policies for the Direct Broadcast Satellite Service	))	IB Docket No. 95-168 PP Docket No. 93-253

REPLY COMMENTS OF

GE AMERICAN COMMUNICATIONS, INC.

GE American Communications, Inc. ("GE Americom") hereby submits its reply to the comments filed by other parties in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding, FCC 95-443 (released Oct. 30, 1995) ("Notice").

I. THE COMMISSION SHOULD LIMIT ITS INITIAL DECISION HERE TO THE MECHANICS OF THE JANUARY AUCTION.

The extensive comments in this proceeding underscore why the Commission should not attempt to make wholesale revisions to its DBS policies on an expedited basis. The parties barely have had an opportunity to obtain and review each other's initial filings within the seven working days provided as a reply period. The comments demonstrate (at best) wide-ranging disagreement over many fundamental issues raised in the Notice. A week is not sufficient time to prepare adequate responses. Equally important, we question how the Commission can adequately review even the incomplete record that will be available here in time to meet its self-imposed December 12 deadline for action in this proceeding.

In these circumstances, GE Americom again urges the Commission to keep its initial decision here as narrow as possible. 1/ We accept for present purposes that the Commission is determined to auction the Advanced channels in January. However, to accomplish that goal the Commission need only establish the auction mechanics that will apply in this unique circumstance. The procedural issues for this particular auction are relatively straightforward, and the parties are in general agreement.

In contrast, the Commission should not make any findings concerning the appropriateness of auctions outside the context of the reclaimed Advanced channels. GE Americom and other parties commented briefly here on why auctions raise serious problems and issues in the satellite context, jeopardizing international growth opportunities for the United States space industry. 2/ The International Bureau is considering the general question of satellite application and authorization procedures in a separate inquiry. A public roundtable discussion on this issue is scheduled for December 19, with a rulemaking expected to follow. The Commission should take care not to prejudge that inquiry in any way in the expedited DBS order scheduled for release a week before even the roundtable meeting takes place.

Similarly, the Commission should not adopt broad new DBS ownership and conduct restrictions in the short time available here. GE Americom strongly

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1/ See GE Americom Comments at 2-4.

2/ See, e.g., GE Americom Comments at 3; Lockheed Martin Comments at 4-7.

believes that the evidence does not support the need for such restrictions. We will not repeat our position here other than to note that at a minimum, the Commission should not adopt new DBS limitations without a strong factual record demonstrating that such restrictions are necessary. The new ownership and conduct rules suggested in the Notice are not cost free. They necessarily would restrict the availability of financial capital and technical expertise to DBS, and interfere with market forces that would otherwise direct those resources in the most efficient directions. If unnecessary restrictions are adopted here, they can raise the cost of DBS for consumers, and chill the full development of this innovative service.

The initial comments do not present facts demonstrating that such costs and burdens on the DBS market are outweighed by public benefits. Competitors and potential competitors of Primestar fill their comments with rhetoric arguing that this particular service provider should be restricted -- while, predictably, they request exemption from the proposed rules for themselves. But these competitors present no facts to justify the regulatory advantages they seek. This is not surprising given the existence of other competitive rules and laws already in place. It also is not surprising given the demonstrated ability of such competitors to provide DBS service today under the current rules, or the reality that firms already have announced a willingness to pay many millions of dollars for the Advanced channels before the Commission suggested that DBS policy changes would even be considered.

As discussed in the next section, GE Americom's primary concern is that overbroad ownership and attribution rules could chill the ability of itself or other similarly situated parties from bringing our financing and technical strengths to the complex task of operating DBS spacecraft. Here the costs of the proposed rules even more clearly outweigh any theoretical benefits. But we also strongly believe that -- at the least -- it would be arbitrary and capricious for the Commission to implement such potentially far-reaching and intrusive changes to the DBS market without providing adequate notice and hearing. Expedited action on an inevitably incomplete record would fail this fundamental procedural standard, and seriously disserve the public interest.

II. PARTIES AGREE THAT THE PROPOSED ATTRIBUTION AND OWNERSHIP RULES ARE OVERBROAD, AND COULD BLOCK EFFICIENT AND PRO-COMPETITIVE INVESTMENT.

GE Americom explained in its comments why the Commission should not compound the barriers to DBS development by extending the reach of any new rules beyond the minimum extent necessary to meet the rules' purposes. The focus of the Notice is alleged competitive issues surrounding a provider of DBS program service to the public. The Notice postulates that additional restrictions are needed to prevent anticompetitive conduct within the market of multi-channel video programming distributors ("MVPDs"). However, even accepting for purposes of argument that additional restrictions are needed on DBS MVPDs, it does not follow at all that those restrictions should apply to parties that are not MVPDs themselves.

GE Americom explained in its comments that the proposed DBS rules were overbroad in two important respects. First, the Notice proposes attribution policies that would make the restrictions applicable to a wide range of parties who provide investment capital or other resources to a DBS MVPD, but do not control the MVPD themselves. 3/ Second, the Notice would apply the restrictions to licensees of DBS satellites even when those licensees operate the spacecraft as carriers, leasing capacity to MVPDs who provide video programming services to the public. 4/ Neither application of the rules is supported by the Notice's expressed rationale, let alone factual evidence in the record. 5/

3/ Id. at 7-11.

4/ Id. at 11-16.

5/ We note that the Justice Department proposes "structural" rules that would have the effect of preventing cable firms above a certain size from owning, controlling or using full-CONUS DBS slots. See Justice Department Comments at 9. GE Americom strongly opposes such a prohibition. Indeed, the Department's position here directly contravenes what the Department itself said just two years ago in defending the U.S. consent decree with Primestar. The Department then firmly rejected a proposal to "prohibit the defendants [including Primestar] from acquiring an ownership interest in any high-power satellite permittee . . . . The Department does not agree . . . that cable companies must be enjoined from entry into high-power DBS. . . . [A] flat ban that prevented cable operators [directly or through Primestar] from expanding into new technologies for delivering video services to consumers is unwarranted and may slow the development of DBS by depriving it of well-situated potential entrants." United States v. Primestar Partners et al., Department's Response to Public Comments on Proposed Final Judgment, 58 Fed. Reg. 60672, 60675 (Nov. 17, 1993).

Furthermore, as discussed in our initial comments here, the Justice Department consent decree, and the related decree agreed to by the states, expressly recognized GE Americom's special status as a non-cable partner in Primestar and preserved opportunities for GE and its affiliates to become involved in other satellite services. See GE Americom Comments at 8-9. For present purposes, we would underscore that the Department's comments are focused on the

This is one area where the commenting parties are in general agreement. For example, Ameritech correctly notes that "the Commission should not create unreasonable barriers to [DBS] investment unless there is an important public policy reason for doing so." 6/ Ameritech argues that attribution limits should be much higher than proposed "so as to increase the amount of capital available for developing this important technology." 7/ MCI argues that the Commission should not "stifle legitimate business relationships" through overbroad conduct rules. 8/ Even those competitors who are most anxious to tie Primestar's hands argue that the applicability of the DBS restrictions should be more narrowly drawn. Thus DirecTV urges that "[t]he Commission should impose spectrum aggregation constraints only where the acquisition of such spectrum would lead to or increase a particular MVPD's exercise of market power." 9/ GE Americom disputes DirecTV's self-serving view of whether this would occur. We also believe that all MVPD operators should be treated the same. However, we agree that the focus of the rules (if any) should be on the DBS MVPD -- not on non-controlling investors in that entity, and not on DBS licensees who are not themselves acting as the DBS MVPD.

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alleged potential conduct of "large cable firms," not parties with non-controlling interests in a DBS MVPD or a satellite carrier.

6/ Ameritech Comments at 4-5.

7/ Id. at 5.

8/ MCI Comments at 17.

9/ DirecTV Comments at 3 (emphasis added).

III. THE COMMISSION SHOULD NOT RESTRICT THE ABILITY OF SATELLITE COMPANIES TO PROVIDE RELATED TELECOMMUNICATIONS SERVICES.

The Notice also proposed new rules that would apply in certain circumstances to what it calls "wholesale DBS service." GE Americom did not address this specific issue in its initial comments, and does not propose to do so here. We have stated our general position that new conduct rules are unnecessary in the DBS market.

However, to the extent that the Commission continues to consider this issue, it is important that it correctly define what is meant by "wholesale DBS." Our understanding is that the Notice intended to refer to activity by a DBS MVPD to distribute programming to other MVPDs for resale to consumers, in addition to distribution of such programming directly to its own end user customers. In either case, the wholesaler is a DBS program provider.

The Justice Department, however, appears to define wholesale DBS slightly differently. The Department suggests that the "DBS provider" would provide the "services" of "aggregating, digitizing, compressing, encrypting and transmitting the video signals via satellite." 10/ The "DBS provider" of these services would, according to Justice, be paid by either the programming vendor or by the MVPD, who would separately pay for the actual programming itself from the programming vendor. 11/

10/ Justice Department Comments at 11.

11/ Id.

GE Americom has previously expressed its concern that the Commission distinguish carefully in its use of the terms DBS "licensee", "operator" or "programmer." We have suggested in particular that the Commission distinguish between the operation of a DBS satellite, and the provision of DBS program service to the public. We noted that satellite operations per se are not the source of the Commission's competitive concern. 12/

The same is equally true in the case of so-called wholesale DBS. The digitizing, compressing, encrypting and transmitting of video services are either basic telecommunications functions or ancillary enhanced services. The Commission should not directly or indirectly adopt restrictions on the provision of such functions by a satellite carrier. Characterization of such functions as "wholesale DBS" (as opposed to the telecommunications) can lead to regulatory confusion. When a carrier is transmitting programming, but not marketing that programming to customers, it should not be characterized as a DBS provider (wholesale or otherwise) and it should not be regulated as one.

This issue may be particularly relevant depending upon how the Commission decides the attribution and affiliation issues. Clearly the concern of the Notice, and for that matter the Justice Department, is with programming access and distribution. Again, GE Americom does not agree that the record supports new regulations in this area. But at a minimum, any restrictions on wholesale DBS should attach only to parties that control either MVPDs or programming. Those

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12/ See GE Americom Comments at 13-14.

restrictions should not attach to parties with non-controlling interests in such entities, or non-controlling affiliations.

CONCLUSION

GE Americom urges the Commission to move slowly in this docket, and as a first step adopt only the basic mechanisms to permit the auctioning of the reclaimed Advanced channels in January. The Commission should not decide broader policy questions on the incomplete record here, and on a timetable that does not permit adequate consideration.

To the extent that the Commission nevertheless adopts new restrictions on DBS ownership and conduct, it must limit those restrictions as much as possible. Overbroad restrictions will deny the DBS market valuable financial support and technical expertise, without promoting any public interest benefits.

Respectfully submitted,

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November 30, 1995

CERTIFICATE OF SERVICE

I, Baldev Krishan, hereby certify that on this 30th day of November, 1995, the "Reply Comments of GE American Communications, Inc." were sent (except as otherwise indicated) by U.S. First-Class Mail, postage prepaid, to the following:

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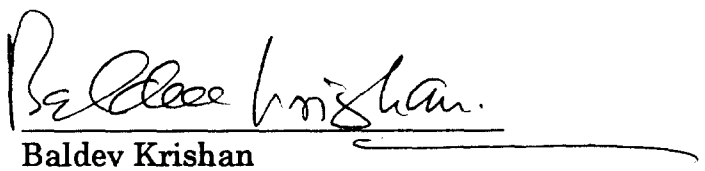

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